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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,026	01/11/2002	Jean-Luc Ridet	A3400PCT-US	5435
5487	7590	03/18/2004		EXAMINER
ROSS J. OEHLER AVENTIS PHARMACEUTICALS INC. ROUTE 202-206 MAIL CODE: D303A BRIDGEWATER, NJ 08807			NICHOLS, CHRISTOPHER J	
			ART UNIT	PAPER NUMBER
			1647	
				DATE MAILED: 03/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/868,026	RIDET ET AL.	

  

<b>Examiner</b>	<b>Art Unit</b>	
Christopher J Nichols, Ph.D.	1647	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see Note below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-4 and 6-13.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8.  The drawing correction filed on \_\_\_\_\_ is a)a) approved or b) disapproved by the Examiner.
9.  Note the attached Information Disclosure Statement(s)( PTO-1449) Paper No(s). \_\_\_\_\_.
10.  Other: \_\_\_\_\_

## DETAILED ACTION

### *Advisory Action*

1. The After Final Communication filed 8 March 2004 has been entered and considered but does NOT place the application in condition for allowance because the response fails to overcome the rejection of claims **1, 2, 3, 4, 6, and 13** under 35 U.S.C. 102(b) as being anticipated by De Groot *et al.* (1997) "Establishment of Human Adult Astrocyte Cultures Derived from Postmortem Multiple Sclerosis and Control Brain and Spinal Cord Regions: Immunophenotypical and Functional Characterization" Journal of Neuroscience Research **49**: 342-354 (**IDS #BU**) for the reasons as set forth in the previous Office Action (8 December 2003) and claims **7-12** under 35 U.S.C. 103(a) as being unpatentable over De Groot *et al.* (1997) "Establishment of Human Adult Astrocyte Cultures Derived from Postmortem Multiple Sclerosis and Control Brain and Spinal Cord Regions: Immunophenotypical and Functional Characterization" Journal of Neuroscience Research **49**: 342-354 (**IDS #BU**) in view of US 5627047 (6 May 1997) Brenner *et al.* and US 5202120 (13 April 1993) Silver *et al.* for the reasons as set forth in the previous Office Action (8 December 2003).
2. Applicant puts forth the proposition that the use of open claim language "comprising" excludes the extra step of the De Groot reference. According to MPEP §2111.3 allows for the inclusion of additional steps in methods which are claimed using open claim language. No additional meaning or weight may be added to the claims in the absence of a more clearly stated method that specifically excludes additional steps in the art using closed claim language.
3. Therefore the rejections as set forth in the previous Office Action (8 December 2003) are maintained.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Christopher James Nichols, Ph.D.** whose telephone number is **(571) 272-0889**. The examiner can normally be reached on Monday through Friday, 8:00 AM to 6:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Gary Kunz, Ph.D.** can be reached on **(571) 272-0887**.

The fax number for the organization where this application or proceeding is assigned is **703-872-9306**.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

*Elizabeth C. Terninew*

CJN  
March 15, 2004

Elizabeth C. Ternine  
Patent Examiner